IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

APRIL AND GREGG DEFIBAUGH,
On their own behalf and as
parents and guardians of V.,
a minor
c/o Kenneth D. Myers, Esq.
6100 Oak Tree Blvd., Suite 200
Cleveland, OH 44131

Plaintiffs,

-vs-

BIG BROTHERS/BIG SISTERS
OF NORTHEAST OHIO BOARD OF
TRUSTEES
8 North State Street, Suite 360
Painesville, OH 44077

and

DAVID GUARNERA
12343 Nantucket Dr.
Chardon, OH 44024

and

MORNING STAR FRIENDS CHURCH
12550 Ravenna Rd.
Chardon, OH 44024

and

MATTHEW CHESNES
12550 Ravenna Rd.
Chardon, OH 44024

and

Case No.

COMPLAINT WITH JURY DEMAND

CASA FOR KIDS OF)
GEAUGA COUNTY
470 Center Street, Bldg. 6-C)
Chardon, OH 44024
)
and
)
MARGARET VAUGHAN
12449 Pearl Rd.)
Chardon, OH 44024
)

)
Defendants.
)

INTRODUCTION

1. This is a complaint brought by private citizens against a quasi-governmental entity, a private, not-for-profit entity, a church, and against several officials and employees of the entities, all acting under color of state law, for redress of violations of plaintiffs' constitutional and federal statutory rights and of plaintiffs' common-law rights. The complaint seeks declaratory and monetary relief.

JURISDICTION AND VENUE

2. Jurisdiction is invoked pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1367 and 42 U.S.C. Section 1983. Venue in this Court is proper pursuant to 28 U.S.C. Section 1391(b) because the events giving rise to these claims took place in this judicial district and this is the judicial district in which defendants are located.

PARTIES

3. Plaintiffs APRIL and GREG DEFIBAUGH are adults who at all relevant times resided in Chardon, Ohio; they are the parents and natural guardians of V, who at all relevant times was a minor.

4. Defendant BIG BROTHERS/BIG SISTERS OF NORTHEAST OHIO (BBBS) BOARD OF TRUSTEES is the governing body which is in charge of BBBS OF NORTHEAST OHIO, a private, not-for-profit entity, which is located in Painesville, Ohio within the Northern District of Ohio. Defendant BBBS Board of Trustees is responsible for the development and implementation of all rules, policies and procedures which govern the organization, including the hiring, vetting and training of employees and volunteers. In addition, defendant BBBS Board of Trustees is responsible for the implementation of all federal and state laws, rules and regulations that apply to non-profit entities that deal with children.

5. Defendant DAVID GUARNERA was, by information and belief, at all relevant times a volunteer for BBBS and in that capacity, was responsible for the implementation of all laws, rules, regulations, practices and policies required by federal and state law and by the BBBS Board of Trustees' policies. Defendant Guarnera was, by information and belief, also a member of defendant Morning Star Friends Church.

6. Defendant MORNING STAR FRIENDS CHURCH (Morning Star) is, by information and belief, a religious institution located in Chardon, Ohio within the Northern District of Ohio. Morning Star is an evangelical church, the mission of which is "to proclaim the

Good News of the Gospel of Jesus Christ and to impart this message of hope as a testimony of God's goodness and glory," according to the church's web site.

7. Defendant MATTHEW CHESNES was at all relevant times a full-time employee of Morning Star, serving in the capacity of pastor. In that capacity, he was responsible for the implementation of all of the church's laws, rules, regulations, practices and policies.

8. Defendant CASA FOR KIDS OF GEAUGA COUNTY was at all relevant times a quasi-governmental entity, the purpose of which is to provide court-appointed special advocates (CASAs) or Guardians ad Litem (court-appointed guardians) to families who have cases in juvenile court; Guardians ad Litem (GALs) conduct assessments, meet with children and families, monitor juvenile court cases, facilitate communications, provide connections to resources, and report to the juvenile court on a child's progress. GALs who work through CASA are assigned to represent individual children by the Geauga County Juvenile Court and are required to act as that child's advocate in helping the court determine what is in the best interest of that child. CASA for Kids of Geauga County is the sole entity from which the Geauga County Juvenile Court assigns GALs and those GALs assigned to specific cases by the Juvenile Court are made parties to the Juvenile Court proceedings; as such, all actions taken by CASA for Kids of Geauga County and the individual GALs are undertaken under color of state law and are fairly attributable to the state.

9. Defendant MARGARET VAUGHAN was at all relevant times a GAL who received assignments from defendant CASA. In that capacity she was assigned by the Geauga County Juvenile Court as the GAL for V and therefore her actions were undertaken under color of state law and were fairly attributable to the state. Defendant Vaughan was also, by information and belief, a member of defendant Morning Star church.

FACTS

10. Plaintiffs April and Gregg DeFibaugh are the parents of V, a young man with disabilities who was 11 years old in 2016, and V(2), a girl who was 14 in 2016. Between 2014 and 2016, V(2) had some behavioral problems and the Geauga County Department of Jobs and Family Services (JFS), the county's social services agency, opened up a case file on V(2), eventually alleging that she was a "dependent" child.

11. A finding of "dependancy" under Ohio law focuses on whether the child is receiving proper care and support based on the condition and/or environment of the child, as opposed to a finding that the parent is at fault. A finding of dependency permits the county's children's services agency to provide a range of services to help the child. An allegation of dependency brings a family within the jurisdiction of a juvenile court; in this case, JFS filed a dependency case alleging that V(2) was dependent on the state for services.

12. Under Ohio law, once dependency charges are filed against a family, the judge presiding over the case must assign the child

involved a Guardian ad Litem (GAL), who is supposed to be both an advocate for the child with the court and JFS, and the "eyes and ears" of the court. The GAL works with the Court and with the county's social services agency, but is independent of both entities.

13. In Geauga County, GALs are assigned exclusively from an organization called CASA for Kids of Geauga County, a non-profit entity that exists solely to train and supervise the assignment of individual GALs to children in juvenile court cases. By information and belief, CASA for Kids of Geauga County (CASA) is a quasi-governmental agency, has an exclusive contract with the Geauga County Juvenile Court and therefore its acts are attributable to the state and it acts under color of state law.

14. During the ensuing court proceedings involving V(2), JFS and the Geauga County Juvenile Court determined that V(2)'s younger brother, V, also was in need of county services and a GAL. Although there was no allegation that V was dependent or required any government intervention, at times when a dependency charge is filed regarding one child, JFS and the Court examine any other children in the home to see if any services are required.

15. In this case, because V was socially awkward, JFS asked the Court to assign a GAL to V, and the Court ordered CASA to assign a GAL to V. CASA assigned defendant Margaret Vaughan. The Juvenile Court approved the assignment of CASA and Vaughan to V's case. Defendant Vaughan was therefore acting under color of state law and her actions were attributable to the state.

16. Defendant Vaughan was a member of defendant Morning Star and as such, supported Morning Star's mission of proselytizing and attempting to persuade people to love Jesus Christ.

17. Using the imprimatur of the state government via her assignment as GAL, and in her capacity as GAL, defendant Vaughan more than once preached to Mr. and Mrs. DeFibaugh about Jesus and more than once left the DeFibaughs with books, tapes, CDs and other works of religious content. Defendant Vaughan repeatedly told the DeFibaughs that "families need God to raise children."

18. On several occasions, the DeFibaughs complained to defendant Vaughan's supervisors at CASA; not only were the DeFibaughs upset that defendant Vaughan was attempting to influence their own religion and the religious upbringing of their children, but they were upset at the coercion that was implied in defendant Vaughan's constant religious talk; defendant Vaughan, having been assigned by the Juvenile Court and CASA, had the power to work hand-in-hand with JFS and to recommend to the Juvenile Court that V should be labeled as "dependent," and to further recommend extreme remedies for V's "dependency," up to and including recommending that V be removed from the DeFibaugh home with custody being given to JFS if the DeFibaughs did not go along with the religious indoctrination.

19. When the DeFibaughs' complaints to defendant Vaughan's supervisors at CASA did not result in defendant Vaughan's removal as GAL or any change in her behavior, the DeFibaughs felt intimidated by defendant Vaughan's constant discussion of religion.

20. Because of V's social awkwardness, defendant Vaughan apparently believed V needed more adult socialization, so she recruited an adult member of her church, defendant David Guarnero, to spend time with V.

21. By information and belief, defendant Vaughan knew that her fellow Morning Star congregation member, defendant Guarnero, also supported Morning Star's mission of spreading the church's religious beliefs, and intentionally recruited him to spend time with V with the intent of encouraging Guarnero to inculcate V with Guarnero's religious beliefs.

22. By information and belief, defendant Vaughan used her official position and state-sponsored power and authority over V and his family to bring defendant Guarnero into regular contact with V with the intent of forcing their religious beliefs on V and his family.

23. In order to create a more official and authoritative link between the DeFibaugh family and defendant Guarnero, and, by information and belief, to disguise the link between defendant Guarnero and defendant Morning Star Church, defendant Vaughan recommended that defendant Guarnero become a volunteer with Big Brothers/Big Sisters of Northeast Ohio, so that his social contacts with V could be provided under the auspices of an officially non-sectarian organization.

24. Defendant Vaughan recommended to the Juvenile Court that BBBS be assigned to help V, and the Juvenile Court accepted the recommendation and assigned BBBS to assist V; therefore, BBBS's

actions are attributable to the state and BBBS acted under color of state law. Further, the Court permitted defendant Vaughan to select the individual "big brother" to be assigned to V and, by information and belief, approved Vaughan's selection of defendant Guarnero as the individual who was assigned to be V's "big brother."

25. Because the Juvenile Court approved BBBS and Guarnero, defendant Guarnero was also acting under color of state law and his actions were attributable to the state.

26. At a meeting with Mr. and Mrs. DeFibaugh, defendants Vaughan and Guarnero and representatives from BBBS, Mr. DeFibaugh told defendants Vaughan and Guarnero and representatives from defendant BBBS that if they (the DeFibaughs) agreed to allow V to become involved in BBBS, they did not want any religious indoctrination to occur. Defendant Vaughan and the BBBS representatives assured the DeFibaughs that there would be no religious indoctrination while V was with his big brother.

27. Throughout 2015 and 2016, defendant Guarnero picked V up from his home and took him on outings in his role as a big brother. V liked baseball, so defendant Guarnero took him to games for the Lake County Captains, a minor league baseball team that plays in Eastlake, Ohio. Defendant Guarnero also took V to his own home to play with defendant Guarnero's nephew, and he took him to Morning Star Church, where picnics and other social events were held.

28. Without the permission of Mr. and Mrs. DeFibaugh and contrary to their express instructions, defendant Guarnero would

often talk about religion to V, and played religious songs on the car radio when he was taking V on outings. Defendant Guarnero would often link religion with his role as a big brother, telling V, "If you don't like God, you're not part of Big Brothers/Big Sisters."

29. Defendant Guarnero also told V repeatedly that he did not like families that did not believe in God.

30. V valued the social interactions that defendant Guarnero offered, such as going to baseball games, but V came to feel intimidated by defendant Guarnero's discussions, believing that if he did not allow defendant Guarnero to continue talking about religion, defendant Guarnero would reject V as a little brother.

31. On or about August 28, 2016, defendant Guarnero told Mr. and Mrs. DeFibaugh that he was taking V to a picnic at his church.

32. Unbeknownst to V or his parents, and without the permission of the DeFibaughs and contrary to their express prohibition of defendant Guarnero or anyone from BBBS attempting to religiously indoctrinate V, defendant Guarnero, acting in his official capacity as a representative of BBBS and the state of Ohio, under the auspices of defendant CASA and with the express or implied consent of defendant CASA and defendant Vaughan, conspired with defendant Morning Star and defendant Chesnes, the pastor at Morning Star, to have V baptized into the Christian faith at that "picnic." Defendants Chesnes and Morning Star, and defendants Guarnero and BBBS knew that V's parents were not present at the baptism and knew or should have known that V's parents would have

not consented to the baptism, or were deliberately indifferent to the fact that V's parents would not have consented to the baptism.

33. In order to both entice and coerce V into going through with the baptism without the knowledge and/or consent of V's parents and knowing specifically that V's parents objected to any attempts at religiously indoctrinating their son, defendant Guarnero threatened V that if he did not go through with the baptism, defendant Guarnero would not take him to any more Lake County Captains baseball games.

34. During the group baptism ceremony conducted by defendant Chesnes on behalf of and with the knowledge and consent of defendant Morning Star, he asked those who wanted to become baptized to stand up; at that moment, defendant Guarnero pushed V out of his chair as if to indicate V was willingly standing up to be baptized.

35. V was confused because he did not fully understand what a baptism was and what it meant, but he wanted to please defendant Guarnero, who was urging him to get baptized.

36. Defendant Chesnes, with the assistance of defendant Guarnero, conducted the baptism by forcing V under water and holding his head under water to the point where V felt like he was choking and could not breathe.

37. After the "picnic," defendant Guarnero took V home and told his parents about the baptism, at which point Mr. and Mrs. DeFibaugh expressed their shock and anger at their son having been baptized without their knowledge and against their express

instructions that BBBS not religiously indoctrinate V while in the care of BBBS personnel.

38. The DeFibaughs immediately ceased contact with defendant Guarnero and defendant BBBS.

39. As a direct result of the ongoing religious indoctrination, baptism and forced ending of his social contacts, V has suffered and continues to suffer severe emotional distress and anxiety, confusion and anger.

40. As a direct result of having had their religious freedoms violated via the forced baptism of their son under the guise of a government-sanctioned, court-approved social program, Mr. and Mrs. DeFibaugh have had their First Amendment rights to freedom of religion and the separation of church and state violated.

41. The defendants' actions, in participating in or permitting the on-going religious indoctrination of V despite his parents' express prohibition; in participating in or permitting the forced baptism of V, including the physical act of holding V under water against the express orders of V's parents not to religiously indoctrinate V; constitute violations of the constitutional rights of plaintiffs Mr. and Mrs. DeFibaugh to choose whether and how to educate their son on matters of religion, and the Constitutional rights of V to be free from religious indoctrination forced upon him by a governmental entity or by quasi-governmental or private entities or private individuals acting under color of state law and with the support and permission of a governmental entity. The failure of defendants to implement any procedures to prevent,

diminish or curtail such conduct; the defendants' failure to properly train their staffs and failure to properly equip their staffs with the tools and skills necessary to successfully prevent such actions; the complete failure of oversight by CASA, BBBS and Morning Star administrators; these acts and omissions and others, committed by defendants under color of state law, constitute violations of plaintiffs' constitutionally-guaranteed rights to freedom of religion.

42. The actions of defendants Guarnero and Chesnes, in physically grabbing V and holding him under water against his will and without his parents' permission, constitute assault and battery under Ohio law.

43. The failure by defendants CASA, BBBS and Morning Star to adequately train their employees and volunteers and to properly oversee and supervise their employees and volunteers, are part of a policy and practice of defendants CASA, BBBS and Morning Star of violating the rights of families who come in contact with these organizations.

44. As a direct result of the actions and omissions of the defendants, jointly and severally, the plaintiffs have suffered and continue to suffer loss of their constitutional rights to choose and practice the religion of their choice and (in the case of Mr. and Mrs. DeFibaugh) the right to provide or not provide religious education to their child as they see fit without the interference and indoctrination of governmental and governmental-related entities and individuals, and severe emotional distress.

COUNT I

45. Plaintiffs reassert the foregoing as if fully rewritten herein.

46. The actions of defendants CASA, BBBS, Vaughan and Guarnero, which are governmental or quasi-governmental actors who were acting under color of state law and whose actions are attributable to the state, constitute violations of plaintiffs' First Amendment rights to freedom of religion.

47. As a direct result of the actions and conduct of defendants, plaintiffs suffered and continue to suffer loss of their constitutional rights to freedom of religion, extreme emotional pain and suffering, and psychological damage.

COUNT II

48. Plaintiffs reassert the foregoing as if fully rewritten herein.

49. The actions of defendants Guarnero and Chesnes, in physically forcing V under water, constitute civil assault and civil battery under Ohio law.

50. As a direct result of the actions and conduct of defendants, plaintiff V suffered physical pain and suffering and extreme emotional distress.

COUNT III

51. Plaintiffs reassert the foregoing as if fully rewritten herein.

52. The actions and inactions of all defendants, in intentionally or recklessly causing severe emotional distress to plaintiffs, constitute intentional infliction of emotional distress under Ohio law.

53. As a direct result of the actions and conduct of defendants, plaintiffs suffered and continue to suffer extreme emotional pain and suffering.

COUNT IV

54. Plaintiffs reassert the foregoing as if fully rewritten herein.

55. The actions and omissions of all defendants constitute negligence and/or negligent supervision under Ohio law in that the defendants had a duty toward plaintiffs to respect plaintiffs' constitutional and common-law rights and to train and supervise their employees and volunteers to act in conformance with that duty to respect plaintiffs' rights, and defendants violated those duties and plaintiffs' rights by engaging in the conduct described above and the damages that flowed therefrom were foreseeable.

56. As a direct result of the actions and omissions of defendants, plaintiffs have suffered and continue to suffer extreme emotional distress.

WHEREFORE, plaintiffs ask that this court grant the following relief:

A) Declare that the acts and conduct of all defendants constitute violations of plaintiffs' constitutional and common-law rights.

B) Grant to the plaintiffs and against all defendants, jointly and severally, an appropriate amount of compensatory damages, and against the individual defendants an appropriate amount of punitive damages.

C) Grant to the plaintiffs and against all defendants, jointly and severally, appropriate costs and attorneys' fees.

D) Grant to the plaintiffs whatever other relief the court deems appropriate.

/s/Kenneth D. Myers
KENNETH D. MYERS (005365)
6100 Oak Tree Blvd., Suite 200
Cleveland, OH 44131
(216) 241-3900
(440) 498-8239 Fax
kdmy@aol.com

GEOFFREY T. BLACKWELL
American Atheists Legal Center
1220 L St. NW, Suite 100-313
Washington, D.C. 20005
(908) 276-7300
legal@atheists.org

Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

/s/Kenneth D. Myers
KENNETH D. MYERS

Counsel for Plaintiffs